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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

McIlWAIN, LLC

Plaintiff,

v.

HAGENS BERMAN SOBOL
SHAPIRO, LLP

Defendants.

No. 4:18-cv-003127 CW

**PLAINTIFF'S OBJECTION TO REPLY
EVIDENCE IN SUPPORT OF
DEFENDANT'S MOTION TO REVOKE
ATTORNEY TIMOTHY J MCILWAIN'S
PRO HAC VICE APPEARANCE**

Date: September 10, 2019

Time: 2:30 p.m..

Courtroom: 6, 2nd Floor

Judge: Honorable Claudia Wilken

Pursuant to Local Rule 7-3(d)(1), Plaintiff respectfully objects to the Declaration and the admission of exhibits attached to Defendant's Reply Declaration filed with this court on August 20, 2019 and respectfully moves this Honorable Court to strike the Declaration and Exhibits from the record.

On August 20, 2019, Defendant submitted in reply to Plaintiff's Response to their Motion to revoke his appearance Pro Hac Vice, a Declaration and series of Exhibits. (Dkt # 98, 98-1). Exhibit A consists of what is purported to be excerpts from the deposition of Ryan Hart that occurred on August 16, 2019. It is unauthenticated hearsay, which is admitted on the face of the document. The remainder consists of website advertisements for some of the attorneys associated with Defendant's firm. They are entirely irrelevant to Defendant's reply. It should also be noted that Defendant's attorney, Leonard Aragon, did not attach any of the purported emails that he sent to Plaintiff's counsel, Attorney Timothy McIlwain as exhibits., that he refers to in his Declaration. The admission of these exhibits would violate Rules 401, 402 & 403, 801, 802, 901 & 902 of the Federal Rules of Evidence. Therefore, his Declaration is wholly unsupported.

It should first be noted that Attorney Aragon's Declaration is in error on the response date to their motion. (Paragraph 17 of his Declaration). Defendant's Motion to revoke was filed July 30, 2019. Rule 6(a)(1)(A) F.R. Civ. P. states that. "COMPUTING TIME. The following rules apply in computing anytime period specified in these rules, in any local rule or court order, or in any statute that does not specify a method of computing time. *Period Stated in Days or a Longer Unit.* When the period is stated in days or a longer unit of time: exclude the day of the event that triggers the period..."

That means the operative date for responding to their Motion commenced on July 31, 2019. Fourteen days after that is August 14, 2016. Defendant graciously agreed to extend the deadline by two whole days provided Plaintiff did not apply to the court for additional time or the extension would be withdrawn.¹ Defendant knew of course, from the 14th to the 16th Plaintiff would be at his own Rule 30(b)(6) deposition noticed by the Defendant and the deposition of non-party witness,

¹ See Email from Attorney Aragon to Attorney McIlwain dated

1 Ryan Hart.²

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3 Wherefore, Plaintiff objects to Defendant's declaration in its entirety and respectfully moves
4 this court to strike the reply Declaration and Exhibits from the record.

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6 Dated: This 28nd Day of August, 2019

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8 Plaintiff, McIlwain, LLC

9 By **S/Timothy J McIlwain, Esq**
10 Timothy J McIlwain, Esq (Pro Hac Vice)

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26 ² Plaintiff did not file the stipulation with the court. Plaintiff inadvertently misread Local Rule 6.1 (a)
27 that the parties could stipulate the time enlargement without a court order, provided the change
28 didn't alter the date or deadline. Nonetheless, Defendant should be equitably estopped from raising
that as an issue. Equitable estoppel "holds the [individual] to what it had promised and operates to
place the person entitled to its benefit in the same position he would have been in had the
representations been true." *Gabriel v. Alaska Elec. Pension Fund*, 773 F.3d 945, 955 (9th Cir. 2014)

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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Plaintiff,

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SHAPIRO, LLP

Defendants.

No. 4:18-cv-003127 CW

**ORDER STRIKING DEFENDANT'S
REPLY EVIDENCE IN SUPPORT OF
MOTION TO REVOKE**

Date: September 10, 2019

Time: 2:30 p.m..

Courtroom: 6, 2nd Floor

Judge: Honorable Claudia Wilken

This Court, having considered the foregoing objection to reply evidence, it is hereby ordered:
GRANTED. The Reply Declaration and supporting Exhibits shall be stricken from the record.
IT IS SO ORDERED:

DATED: This _____ day of _____, 2019

Claudia Wilken U.S.D.J.

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McILWAIN, LLC

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CERTIFICATE OF SERVICE

Date: September 10, 2019
Time: 2:30 p.m..
Courtroom: 6th Floor

Judge: Honorable Claudia Wilken

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Plaintiff's Objection to Reply Evidence was served on the following counsel of record on this 28th day of August, 2019 by email transmission:

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5 Dated this 28th day of August, 2019.

6 S/Timothy J. McIlwain
Timothy J. McIlwain, Esq.
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